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## The Criminalization of Immigration: Value Conflicts for the Social Work Profession

Rich Furman

*University of Washington, Tacoma*

Alissa R. Ackerman

*University of Washington, Tacoma*

Melody Loya

*West Texas A & M*

Susanna Jones

*Long Island University, Brooklyn*

Nalini Negi

*University of Maryland*

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# The Criminalization of Immigration: Value Conflicts for the Social Work Profession

RICH FURMAN

Social Work  
University of Washington Tacoma

ALISSA R. ACKERMAN

Social Work Program  
University of Washington Tacoma

MELODY LOYA

Social Work  
West Texas A & M

SUSANNA JONES

Long Island University, Brooklyn

NALINI NEGI

School of Social Work  
University of Maryland

*This article examines the impact of the criminalization of immigration on non-documented immigrants and the profession of social work. To meet its aims, the article explores the new realities for undocumented immigrants within the context of globalization. It then assesses the criminal justice and homeland security responses to undocumented immigrants, also referred to as*

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*the criminalization of immigration. It subsequently explores the ethical dilemmas and value discrepancies for social workers that are implicated in some of these responses. Finally, it presents implications for social workers and the social work profession.*

*Key words: Immigration, social work ethics, criminalization of immigration, globalization*

Social Work is the profession charged with guarding the rights and promoting the psychosocial health of at-risk populations (Lum, 1996). In particular, social work has long been concerned with the rights, well-being, and health of immigrant populations (Chang-Muy & Congress, 2008). While social workers continue to play a significant role in providing direct services to immigrants, they are perhaps less involved, or even aware, of the struggles that immigrants face given the changing realities in which immigrants find themselves. Even when social workers are involved with immigrant clients, they often report feeling helpless and disengaged (Jones, forthcoming). The dynamics of post 9/11 politics, globalization, shifts in sentiments against immigrants, anti-immigration federal and state policies, and other factors have led to significant changes and challenges for many immigrants. More specifically, the movement toward the criminalization of immigration, most notably the undocumented population, has led to powerful dilemmas and barriers to which social workers must respond. In fact, the authors of this article claim that it is our imperative duty as social workers to get involved on both policy and practice levels when we serve immigrant clients. Given the complexities of immigrants' lives and immigration policy, social workers need to address this issue from multiple perspectives using our training on all levels: micro, mezzo and macro analysis and practice. There is a sense of urgency as we write given the recent spate of anti-immigrant proposals and legislation being issued.

This article examines the intersection between criminalization, immigration policy, and the spread of economic, social and political violence perpetrated upon the lives of undocumented immigrants. We argue the convergence of these threats toward undocumented persons—and citizens alike—will have profoundly negative consequences for the everyday lives of undocumented immigrants and for social work policy and

practice. Further, the reproduction of xenophobic rhetoric and policies will keep us, as a profession and nation, immobilized in terms of enacting real immigration reform. First, in this article we explore the new realities for undocumented immigrants. Second, we assess the criminal justice and homeland security responses to undocumented immigrants, also referred to as the criminalization of immigration. Third, we explore the ethical dilemmas and value discrepancies that are implicated in some of these responses. Finally, we discuss the implications of our analysis for social workers and the social work profession.

### New Realities for Undocumented Immigrants

#### *Post 9/11 Realities*

While conflicted and negative feelings toward immigrants are certainly not new, the terrorist attacks on U.S. soil have exacerbated nativist and ethnocentric sentiments in the United States (Nielsen, 2009). In October 2001, President Bush signed into law The Patriot Act (formally known as The USA Patriot Act). Among other things, this act sanctions law enforcement and immigration authorities with the right to detain and deport suspected terrorists. The very foundation of America's relationship to immigrants has shifted in the wake of new calls for protecting our borders, broader national security, and a resurgence of an "us" versus "them" mentality (Sinnar, 2003). Suddenly, immigrants are not merely seen as economic or cultural beings, that is, having an impact, positive or negative, on these two domains, but as suspects through which the very safety and survival of our country is at risk. Tumlin (2004) wrote "The new terrorism policy sends the message that immigrants of certain nationalities should be viewed as potential terrorist suspects first and welcome newcomers second, if at all" (p. 177). This antipathy toward immigrants and discussions of national security have now extended to immigrant groups that have no history of engaging in terrorist acts. Calls to secure the United States/Mexico border have shifted from concern regarding the high numbers of undocumented immigrants to concern about national security and the infiltration of terrorists, vilifying the undocumented population even further. The House Committee on Homeland Security (2007)

stated:

In addition to the criminal activities and violence of the cartels on our Southwest border, there is an ever-present threat of terrorist infiltration over the Southwest border. Data indicates that there are hundreds of illegal aliens apprehended entering the United States each year who are from countries known to support and sponsor terrorism. (p. 4).

These discursive shifts have influenced the feelings of many citizens regarding undocumented immigrants and have also impacted immigrants' experiences within the United States, leading to higher levels of marginalization and discrimination (Provine & Doty, 2011). Furthermore, egregious human rights violations—raids, deportations, detentions, to name a few—against immigrants in the name of homeland security have been rampant since 9/11 (Bacon, 2010). Making matters worse, the Obama administration deported approximately 400,000 people last year, which is the largest number of deportations in our nation's history. According to a national survey of Latinos conducted by the Pew Hispanic Center in 2007, we learn that two thirds of those surveyed say life is more difficult because immigration reform has yet to be enacted. Fewer surveyed also stated they experienced serious hardships with regard to housing, travel, and accessing services (Pew Hispanic Center, 2007).

### Globalization

While there has been an increase in the sociopolitical pressures toward closing our borders, global realities have, in many ways, made nation-state borders more permeable. (Sassen, 2002). This phenomenon, known as globalization, on the most basic level refers to the increasingly closer integration of countries and people throughout the world (Stiglitz, 2003). The advent of easy and relatively low-cost telephonic and computer communication systems have contributed to increasing globalization. Although in some ways, a global focus has been present since the advent of sailing and trade, increases have been exponential in the last 50 years. While

goods are allowed to flow freely back and forth across borders with a lessening of regulations, the same does not hold true for people. Indeed, social, psychological and economic relationships and structures are now embedded in a globalizing world in which new forms of transnational organizations and social structures impact the human experience. Migration can no longer be simply regarded as a group of people coming to the United States and “assimilating” over time. Instead, new waves of immigrants should be viewed as a transnational phenomenon (Portes, 1997; Pries, 2004). Often, many immigrants live lives that transcend nation–state boundaries, moving back and forth between countries as they strive to meet various economic, familial and psychological obligations (Furman & Negi, 2007).

The social and economic forces that act upon transmigrants and their sending and receiving communities are so powerful that current strategies for closing the border are likely to fail. The common joke that building a ten foot wall would lead to a rash of sales for eleven foot ladders speaks to the difficulty of local and even federal policy in altering the powerful forces of globalization.

### The Criminalization of Immigration

While it is the contention of the authors that the criminalization of immigrants has heightened and taken on new dynamics in the post-9/11, globalizing world, the incarceration of immigrants is not a new phenomenon. The history of American policy shows how the treatment of immigrants and subsequent immigration policy has reflected sociopolitical “crises” of the day. The history of incarcerating immigrants dates back to the War of 1812 (Daniels, 2006). During World War II the Alien Registration Act of 1940 aimed to make detention and deportation easier by legalizing the conviction of subversive acts, most notably those involved in communist activities. Approximately 110,000 Japanese Americans were held in internment camps during World War II; although not a phenomenon directly related to immigration, the policy decisions leading to the internment of these American *citizens* underscores the racism and xenophobia that shape many policies when looking at “others.”

United States immigration policy that utilized incarceration was, historically, two-pronged. First, criminal aliens, meaning those who committed criminal acts while on U.S. soil, or those who lied about a criminal record upon entry into the country, could be incarcerated. Only those convicted of certain felonies could be deported, but often deportation was waived by a state judge. Second, refugees, or those individuals with no criminal history, could be detained for further inquiry.

Through the first half of the twentieth century, imprisonment of immigrants was a part of immigration policy that remained relatively invisible to most Americans. In the 1940s and 50s, only a handful of cases dealing with immigrant imprisonment made it through the courts. Ellis Island closed in 1954 and little was heard about the imprisonment of immigrants until 1981 when the Immigration and Naturalization Service opened the Krome Avenue Detention Center near Miami. The purpose of this center was to monitor undocumented refugees from Cuba and Haiti and over the ensuing decade, thousands of refugees were detained in this and other INS facilities. In 1982, then President Ronald Reagan introduced a new policy mandating imprisonment for all refugees that the INS deemed unauthorized to enter. Around the same time, federal policy regarding the deportation of criminal aliens shifted. While under previous standards one could be deported for felonies, the policies of the early 1980s lowered the threshold to less serious crimes and made deportation mandatory. We see this same pattern—lowering deportation thresholds—repeated today (see discussion below).

In 1998, Jonathon Simon warned about the continued and expanding practice of locking up refugees, and while those targets for imprisonment have shifted, the basic premise of Simon's article remains. In the late 1990s and especially after 9/11, focus shifted to human security, as fear about the criminality of undocumented immigrants and terrorism rose (Barry, 2005). Post 9/11 the number of immigrants detained has increased (Abramsky, 2004), and both detention and incarceration have become stalemates of immigration policy in the U.S. In the next two sections we discuss the past decade of changes to federal immigration policy and the new developments in state-level legislation.

*U.S. Immigration Policy in a Post-9/11 World*

Directly following the 9/11 terrorist attacks, President Bush signed The Patriot Act into law. While the stated purpose of this law was to stop terrorism, it has had an impact on documented and undocumented immigrants, and native and naturalized citizens alike, in the United States. The law has had a particularly adverse effect on certain groups of immigrants, namely the Arab and South Asian populations (Sekhon, 2003). Sekhon argues that the Patriot Act specifically targets these individuals in an effort to intercept and obstruct terrorism. While some, like Sekhon (2003), argue that the Patriot Act has targeted a specific group of people, others suggest that immigration policy in the post-9/11 climate has had much farther reaching consequences. The fight against the “war on drugs,” for example, during the 1980s, criminalized and incarcerated many African-American men and men of color, sending them to prison, thereby, “browning” the U.S. prison population. Some argue that immigration policy today parallels the “war on drugs” in that Latino men and women are stripped of constitutional rights under U.S. deportation law and spend time in prison and/or are deported (Miller, 2006). As a result of federal policies like Operation Streamline, initiated again by the Bush administration in 2005, border crossers are being prosecuted in criminal, not civil, court and incarcerated as a result (Abdullah, 2010). Interestingly, the prison industry benefits handsomely from this increase in incarceration rates. “Since 2005, an estimated \$1.2 billion in federal dollars—in Texas alone—have been funneled into warehousing the undocumented in predominantly for-profit private jails and detention centers, while they await trial or serve sentences prior to deportation” (Abdullah, 2010).

Amidst fear of terrorism and the hope for “safer communities,” U.S. immigration policy now focuses on national security, immigrant detention, and state and local level enforcement. At the federal level, bipartisan comprehensive immigration reform was stymied, but funding for programs linked to homeland security continued to grow (Mittelstadt, Speaker, Meissner & Chisti, 2011). The events of 9/11 placed enforcement of U.S. borders among the top priorities. With more intense border security—including the deployment of members of the National

Guard to the US-Mexico border—and broader use of investigations of individuals who have already entered the country, the number of people detained and deported has reached an all time high.

In 2007 alone, over 280,000 immigrants were deported, which was a significant increase from the previous year (Immigrant Justice Network, 2011). In 2008 and 2009, the Obama administration deported 359,795 and 395,165 immigrants, respectively. These years account for the largest numbers of immigrant removal in United States history (Department of Homeland Security, 2011). The Transactional Records Access Clearinghouse (TRAC) of Syracuse University states that criminal prosecutions of undocumented immigrants reached its zenith in early 2008 when immigration cases accounted for almost 60% of all new federal cases ([www.trac.syr.edu](http://www.trac.syr.edu)). Currently, over 24,000 individuals, roughly 12% of the federal prison population, are incarcerated for immigration crimes or violations (Federal Bureau of Prisons, 2011).

While one can see the effects of increased enforcement of federal immigration laws, the ability of the U.S. government to pass comprehensive immigration reform has failed. The Comprehensive Immigration Reform Act of 2007, which would have provided a path to legalization for the undocumented, failed in the U.S. Senate. Efforts to revive talks on immigration reform have also failed and this lack of progress has prompted states to champion their own immigration policies.

#### *State-Level Immigration Policy*

While criminalizing immigrant populations has historical precedent, the introduction of state level immigration policy is new (Mittelstadt et al., 2011). It is important to note that being in the U.S. illegally is not a criminal act (*Kansas v. Martinez*, 38 Kan. App. 2d 324, 2007). However, state legislators have attempted to change that. In 2010, the Arizona legislature passed the Support of Law Enforcement and Safe Neighborhoods Act (SB 1070). The Act made it a misdemeanor offense for an immigrant to be without proper documents. In addition, the law directs law enforcement to attempt to determine one's immigration/citizenship status at every lawful encounter where there is reasonable suspicion to believe the person is not in the state legally. There has been heated debate over the passage

of SB 1070 and the Obama administration even filed a lawsuit against Arizona in an effort to thwart the law [703 F.Supp.2d 980] (D. Ariz., 2010). The judge in the case issued a preliminary injunction which blocked the most controversial aspects of the Act, but the remainder of SB 1070 took effect in July, 2010. By early 2011 at least 10 states, including Georgia, Utah and Indiana, had drafted similar bills and passed legislation, yet much of the legislation is still being hammered out in the courts.

### Social Work Ethical Dilemmas and Value Discrepancies

The criminalization of immigration compels social workers to contend with numerous ethical dilemmas. An ethical dilemma is a situation in which there is more than one clear ethically permissible response (Furman, 2003). In ethical dilemmas, by privileging one value over another through action, social workers violate another important value or ethical principle (Furman, Downey, & Jackson, 2004). Therefore, within each ethical dilemma exists both adherence to, as well as violation of, professional values. Social contexts in which the needs of society at large, as represented by government through the codification of laws and statutes, conflict with the needs of vulnerable populations, nearly always lead to ethical dilemmas.

Furman, Langer, Sanchez, and Negi (2007) qualitatively explored the implications of Proposition 200 (an Arizona ballot initiative passed by a wide margin in November 2004) on the potential ethical dilemmas that social workers might face should immigration be more fully criminalized. Proposition 200 requires public employees to check the legal status of individuals before the provision of any social services that may be regarded as public benefits. This proposition, enacted into law in Arizona yet never fully implemented, penalizes providers who serve undocumented people with a fine and/or jail time. Furman et al. (2007) studied the perceptions of social work students and future social work practitioners about choices they would make regarding practice decisions. The researchers found several key ethical principles and resolutions for ethical dilemmas, which are salient to the criminalization of immigration. There are three lessons we can glean from the Furman et al. (2007) study that apply to the ethical conflicts for social workers as related to the criminalization of immigration.

*Obeying the Law Versus Adhering to Professional Values*

With the passage of antiquated and punitive immigration legislation, social workers are in a quandary in which they either obey the law or violate professional values. Social workers are left to conceptualize how they provide services to undocumented clients differently than others. In other words, social workers will often come to view undocumented immigrants as a second class "other" for which certain laws and statutes prohibit services. This in and of itself may lead to small forms of discrimination, as social workers concerned with their own well-being and potential legal sanctions may not be free to prioritize and privilege the needs of individual clients. A social worker who is worried about violating the law may simply not fully follow up on a referral, or a supervisor may not prioritize finding a worker who is fluent in the language of the non-documented potential client. The move towards the criminalization of immigration pushes the profession toward the uncomfortable function of maintaining social control. This continues the deterioration of the social change agenda, which has been declining due to the conservatization of the profession, the medicalization of human problems, and the increased focus, via evidence-based practice, on that which is easily measurable (Furman, 2009).

*Reporting to Authorities Versus Confidentiality*

Standards regarding confidentiality are upheld by state law and professional values. Confidentiality is one of the core values of the profession that has clear ethical and practical implications. Ethically, confidentiality places the clients at the center of the healing process, and demonstrates to them that their needs are of the highest value. It demonstrates to clients that with the exception of certain behaviors that place others and self in harm's way, they are entitled to be forgiven for past transgressions, and that in spite of these transgressions, they are deserving of dignity, respect, and the opportunity to grow, heal and change. Practically, confidentiality allows for a safe space in which clients may present the totality of their lives. It serves as a protective social factor, in that it encourages people who may have harmed others to come forward and change their lives. Without confidentiality, both current and future

clients will not engage in social work services and treatment. Providing information to legal agencies to comply with one set of immigration laws may actually lead social workers to break laws governing confidentiality. Currently, social workers are not permitted to provide information to outside entities unless the client is a harm to oneself or others, or has perpetrated child or elder abuse. As such, many of these laws and potential laws have been called into question for this and other legal reasons.

### *One Versus Many*

Social workers may be forced to decide between the welfare of one client versus the well-being of their whole client population, that is, when they are compelled to ignore or circumvent laws that place the integrity and potential well-being of their whole agency at risk. By being forced to worry about the survival of their agency in the face of anti-immigrant laws, social workers may place organizational needs over the needs of individual clients. This dynamic threatens to pit human service agencies against their most vulnerable clients, and the ones that are most in need of services. This perverse ethical dilemma actually compels social workers to violate one of two central values of the profession: social work's history and championing of the social agency, versus the centrality of the needs of individuals from disadvantaged groups.

## Implications for Social Work Practice

In this section, we explore several key implications of how the movement toward the criminalization of immigration impacts social work. Important implications can be found for micro and macro practice, the human service agency, research and education.

Social workers are required to practice with cultural sensitivity, but it is difficult to know how that sensitivity may be impacted by the political climate. As part of the larger society, social workers are inundated with mixed messages about immigration. The increasing laws and restrictions targeting non-documented immigrants from Mexico and South America, along with increasing criminal penalties for failure to report undocumented persons, may leave social workers feeling

stuck between the values of the profession, personal values, and current state and federal laws. Provine and Doty (2011) discussed how race continues to impact the current policies that have increased exclusionary immigration policies, noting how the focus of restrictive laws falls on immigrants from Mexico. One must wonder if the immigrants fit the stereotype of "American" (white, Christian, and northern European, according to Provine and Doty), if the response in terms of criminalizing illegal immigration would be the same. Even within the highest echelon of politics, the stereotype of what it is to be "American" has been challenged; debate over whether or not President Barack Obama is "American" continues to surface. Kong (2010) suggested that this debate may be due to the stereotypes of "American" as "white" and President Obama challenging this stereotype. Additionally, Americans tend to identify themselves by race, where in other countries persons are much more like to identify themselves by nationality (Kong, 2010). This seems to demonstrate the relevancy of race and ethnicity in American society, leaving those who do not fit the stereotype experiencing discrimination and racism.

When exploring the ability to provide culturally sensitive services, Loya (2011) found that white social work practitioners were subject to color-blind racial attitudes, which have been linked to prejudice in other studies (Neville, Lilly, Duran, Lee, & Browne, 2000). Additionally, subscribing to color-blind racial attitudes suggests that multi-cultural counseling competencies may be decreased (Neville, Spanierman, & Doan, 2006). These findings call into question the ability of social workers to practice with true cultural sensitivity; how can a social worker be "culturally sensitive" to difference if they refuse to acknowledge the ramifications of those differences? Since exclusionary policies and immigration restrictions target undocumented workers from south of the border, the presence of color-blind racial attitudes are of concern. Add this lack of awareness to the mixed messages that social workers receive between their social work courses, the Code of Ethics, and the law, and it is easy to see how frustration over which way is the "right way" could develop. Furman et al. (2007) found that social work students were very conflicted regarding the provision of services to undocumented persons when

providing services violated reporting laws. Some of the participants stated that they would provide services and not report, while others stated that they would provide services and then report.

Social workers must discuss these important issues in their agencies and develop clear guidelines for responding to many of the dilemmas and challenges presented here. These conversations should occur within all levels of an agency, including members of the board of directors, executive leadership, and front-line workers. While some agencies may feel that airing these issues openly would bring attention to them, to not do so is to deny the very nature of the conflicts themselves and place workers and the agency in a vulnerable situation.

Such discussions could generate yet another implication of the criminalization, which is the need for social workers to be involved in social policy and legal advocacy. When advocacy occurs at the agency level, or even more powerfully as part of a consortium of like-minded agencies, the ability to assert collective power increases. Thus, such issues make it increasingly important for social workers to become involved in national social work organizations. The National Association of Social Workers has taken an official position opposing law SB1070 in Arizona, which allows law enforcement officers to stop people they “reasonably suspect” may be illegally in the country. The National Association of Social Workers (NASW) (2010) states that:

This law will undoubtedly increase discrimination and racial profiling as it permits police to apprehend someone based simply on his or her appearance. Not only will it erode the civil rights of residents of Arizona, but it will also erode public trust in the police and diminish public safety. Immigrants who are victims of a crime will be less likely to report crime, as victims may now be asked to prove their legal status and subsequently be arrested themselves. (para. 2)

In this policy statement, the organization further asserts its concern with the ethical and practical aspects of the law, and connects its position to the policy tool kit, in which suggested courses of action are provided.

Social workers may be placed in the situation of working with children whose parents have been incarcerated during the increasing raids around the country targeting undocumented workers. Bess (2011) suggests that social workers need to: engage in "social and political action" (p. 2); fight discrimination and exploitation; and "advocate, educate, and initiate" (p. 2). Social workers, according to Bess, need to explore the relevancy of the issues within their own practice settings and need to advocate for clients that have been impacted by immigration policies.

The need for research in this area is apparent. Past research demonstrates that at least one state proposed legislation greatly influenced social workers' perceptions on how they believe they would act (Furman et al., 2007). The relationship, however, between one's perceptions and intended behavior is not always clear. Research that measures the relationship between the criminalization of immigration and the actual behaviors of practitioners would help clarify social workers' responses to the dilemmas presented.

Criminalizing immigration will have long term consequences on the public health, safety, and economic productivity of immigrants and therefore all of society. The reality is that as undocumented immigrants realize that human service organizations are no longer a safe haven, they will keep many of the most intractable problems hidden until they reach a crisis state. For instance, a depressed undocumented woman with a substance abuse disorder is not likely to seek treatment voluntarily and may wind up in an emergency room after a suicide attempt. The acuity of her condition may severely impact the educational attainment of her American-born children (who are citizens). These children may subsequently develop behavioral health disorders that will require intensive and costly intervention.

On an economic level, the incarceration of undocumented persons is estimated to have cost \$1.7 billion in 2009. Private corporations compete for federal contracts to imprison those arrested, at a cost of around \$122.00 per night (Bess, 2011). According to Bess (2011), "immigrants have become the fastest growing population in federally-funded detention facilities" (p. 1). Most of these immigrants do not have criminal

records, yet are incarcerated for entering the country without documentation.

As a profession that claims to fight for social justice and places advocacy at the top of the list of ethical obligations, it is imperative that social workers examine their personal beliefs and have knowledge of agency policies. This awareness and knowledge can help social workers effectively provide services and advocate for their clients where necessary. As political rhetoric heats up during the current election season, it greatly behooves social work practitioners, along with others in the helping professions, to remain cognizant of the ever-changing landscape of immigration laws and policies to assess their impact on day-to-day practice for those they purport to serve.

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